



California Law Update

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California Employers Face Expanded Liability For Meal And Rest Break Violations

Within the last sixty days there have been major developments in California regarding meal and rest period laws and the remedies afforded to employees. The California courts cannot agree whether workers can seek compensation for missed breaks stretching back for only one year or for four years. This confusion will ensure a continued rise in the number of lawsuits based solely on alleged meal and rest period violations pursuant to California Labor Code section 226.7 and may signal an expansion of an employer's liability.

Rest and Meal Break Requirements Under California Law

Under California law, an employer must provide a thirty minute meal break to employees who work more than five hours per day and a second thirty minute meal break to those working more than ten hours per day. See Cal. Labor Code § 512(a). The California Industrial Welfare Commission further mandates a ten minute rest break every four hours or fraction thereof worked. Cal. Code Regs., tit. 8 § 11070(11)(12). Should an employer violate either law, an employer "shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided." Cal. Labor Code § 226.7(b). A debate has raged among attorneys and now between the courts as to whether the one hour remedy should be considered a penalty or a wage. The legal significance for employers is that if considered a wage, employees may sue for up to four years of payments; if considered a penalty, employees may recover for only one year.

The Controversy Commences, an Appellate Court Split on Meal and Rest Break Remedies

The conflict amongst the appellate courts commenced in December 2005 with the First District Court of Appeal's decision in Murphy v. Kenneth Cole, 134 Cal. App. 4th 728 (2005), wherein the Court held that the one hour pay remedy in Labor Code section 226.7 is a penalty. The Court reasoned that Labor Code section 226.7 imposes payment without regard to actual loss suffered by the employee and is in the nature of a penalty. As such, an employee's claim of meal and rest break violations must be raised within one year of the last date that the claim accrued and an employee may only recover the one hour remedy for meal and rest break violations going back one year. The Fourth District Court of Appeal disagreed finding in National Steel and Shipbuilding Co. (NASSCO) v. Superior Court, 06 C.D.O.S. 636 that the additional hour of pay remedy constitutes a "penalty against the employer in the form of a wage to the employee" and is consequently subject to a three year statute of limitation. The Court additionally ruled, albeit without any reasoning, that such remedy can also be asserted and recovered as restitution under California Business & Professions Code section 17203 which affords a four year statute of limitation. Consequently, the decision in Nation Steel and Shipbuilding effectively expanded liability of California employers by affording plaintiffs a significantly

longer timeframe to seek damages for meal and rest break violations. To add further fuel to this controversy, California's Second District Court of Appeal issued a decision on January 27, 2006 in Mills v. Superior Court (Bed, Bath & Beyond), 06 C.D.O.S. 837, finding, as did the First District, that the one hour pay remedy set forth in California Labor Code section 226.7 constitutes a penalty, not a wage and thus, limiting the remedies available to a plaintiff to only one year. This clear split between the appellate courts could result in the California Supreme Court granting review in an effort to dispense with the conflict and definitively ruling on the extent of California employers' liability for meal and rest break violations.

What Can An Employer Do In Light Of The Conflict Over The Statute of Limitations For Suing An Employer Over Violations Of Meal and Rest Breaks

As a result of this split of authority between the appellate courts of California, the natural inquiry for California employers is how they can protect themselves from further exposure in wage and hour claims. It is recommended that California employers commence with the following:

- **Update employee handbooks, if necessary, advising employees of their right to meal and rest breaks and ask them to come forward immediately if a break is missed.**
- **Train supervisors to make sure employees take their mandated ten minute rest break and thirty to sixty minute meal break.**
- **Establish a tracking system or protocol to make certain that non-exempt employees are taking their required meal breaks.** According to the Labor Commission, an employer has an affirmative obligation and must take reasonable steps to ensure that its employees are relieved of all duty, not performing any work, and are free to leave the worksite during their meal period. This may require employers to perform audits to ensure compliance with California Labor laws and wage orders.
- **Pay any penalty for a missed meal and/or rest period in the same payroll period in which it occurred to assure adequate record keeping.**
- **Maintain all employee time records for a minimum of four years.** Until the on-going conflict between the appellate courts is resolved, the Court's decision in National Steel and Shipbuilding Co. (NASSCO) that found the remedy in Labor Code 226.7(b) constituted a wage is still good law thus, allowing a plaintiff an extended statute of limitations to three years and four should he sue under California Business and Professions Code section 17200.

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